



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Planning Systems, Inc.--Request for
Declaration of Entitlement to Costs

File: B-246170.2

Date: March 2, 1992

John R. Tolle, Esq., for the protester.
Michael S. Roys, Esq., Department of the Navy, for the
agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protester is not entitled to award of the costs of filing and pursuing its protest where the agency reopened discussions and requested another round of best and final offers approximately 5 weeks after the protest was filed, which was approximately 1 week after it ascertained that inappropriate discussions may have been conducted with the awardee, but such action was not taken in response to a protested violation of a statute or regulation.

DECISION

Planning Systems, Inc. requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest. On October 9, 1991, Planning Systems protested the award of a contract to MAR, Inc. under request for proposals (RFP) No. N00612-90-R-7004, issued by the Department of the Navy. On November 19, the agency notified our Office that it was reopening negotiations and requesting another round of best and final offers (BAFOs), and requested that we dismiss the protest. We dismissed the protest on November 20.

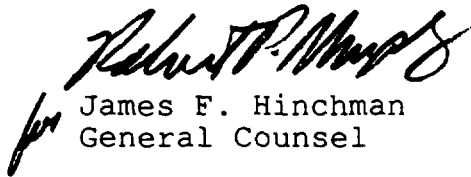
On November 25, the protester filed a claim with our Office under section 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)), for the costs of filing and pursuing its protest. Pursuant to the revised regulations, if the contracting agency decides to take corrective action in response to a protest, we may declare the protester to be entitled to recover the reasonable costs of filing and pursuing its protest. This provision was intended to allow the award of costs where we find that the agency unduly

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delayed taking corrective action in the face of a clearly meritorious protest. Northwest Cleaning Serv.--Request for Declaration of Entitlement to Costs, B-243861.2, Jan. 22, 1992, 92-2 CPD ¶ ____; PAI Corp. et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ _____. Planning Systems argues that because the agency took corrective action as a result of its protest, Planning Systems should be reimbursed for the costs incurred in bringing this matter to the Army's attention. We disagree.

Here, the agency discovered on November 8, during the preparation of its report, that post-BAFO discussions may have occurred with the awardee (an issue which was not raised by the protester), and on November 14 notified all offerors that the agency was reopening discussions and requesting another round of BAFOs. In these circumstances, the agency did not take corrective action in response to a protested violation of a statute or regulation as may entitle the protester to recover protest costs. Moreover, such action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our regulation is designed to encourage.

Accordingly, Planning Systems' request for a declaration of entitlement to costs is denied.


for James F. Hinchman
General Counsel